IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 377 of 2004
With
CRIMINAL REVISION APPLICATION NO.353 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANSUKHBHAI MADHAK

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 377 of 2004
MR DP KINARIWALA for Petitioner No. 1
Mr.H.M.Prachchhak, learned Addl.P.P. for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI

Date of decision: 25/06/2004

COMMON ORAL JUDGEMENT

1. Rule in Criminal Revision Application No.377 of 2004. Mr. Prachchhak, learned Addl.P.P., waives service of rule on behalf of respondent. By consent of the counsel appearing in the matter rule is fixed forthwith.

2. Both these Revision Applications were notified before me for admission on 15.6.2004 and considering the request of Mr. Kinariwala, these maters were adjourned to 18.6.2004 and, thereafter, again considering the request of Mr.Kinariwala, I have adjourned the matters to 21.6.2004. When both the Revision Applications were placed for admission on 21.6.2004, I had issued rule in Criminal Revision Application No.353/2004 and the rule was made returnable on 30.6.2004 and the learned Addl.P.P. has waived service of rule and the rule was ordered to be heard peremptorily on 30.6.2004.

3. As submitted by Mr.Kinariwala that in Criminal Revision Application No.377 of 2004 he wants to amend the petition in view of the fact that recently the court has again while deciding the Application for adjournment imposed cost of Rs.10,000/-- while adjourning the matter as per order dated 15.6.2004 and accordingly the Revision Application was adjourned to 25.6.2004. Mr. Kinariwala has brought to my notice that in a connected Revision Application being Criminal Revision Application No.353 of 2004, raising similar point, the court has issued rule and the rule was made returnable on 30.6.2004 and accordingly request is made that though rule is made returnable on 30.6.2004, the papers of Criminal Revision Application No.353 of 2004 be called for from the Department and both the Revision Applications be dealt with and decided finally. In view of the request made by Mr. Kinariwala, Mr. Prachchhak, learned Addl.P.P., who appeared in the both the Revision Applications, has agreed that he had no objection if the papers are called for from the office and both the Revision Applications be heard and decided together as he has already got the papers of connected Revision Application, as he has waived service of rule in the said matter.

4. Considering the joint request made by the counsel appearing in the matter and as the point of issue raised in both these Revision Applications is similar one, where the petitioner has challenged the order passed by the Presiding Judge imposing cost on the petitioner accused while granting application for adjournment in a case which was fixed before the Presiding Judge for recording evidence and the witnesses were present, I dispose of both these Revision Applications by a common order.

5. Mr.Kinariwala has taken me through the applications and the orders passed thereon by the learned trial Judge. In Criminal Revision Application No.377 of 2004 the petitioner is the accused against whom a charge-sheet was filed for the offences under Prevention of Corruption Act and the case was registered before the learned Special Judge, Amreli being Special A.C.B.Case No.36 of 2002 and the trial was in progress.

6. In Criminal Revision Application No.353 of 2004 the petitioner is the accused against whom charge-sheet was submitted for the offences under the Prevention of Corruption Act and the trial of ACB Case being Special ACB Case No.18 of 2001 was in progress before the learned Special Judge, Amreli. In Criminal Revision Application No.353 of 2004 the petitioner has challenged the order passed by the learned Special Judge below Application Exh.22 dated 23.2.2004 in Special ACB Case No.18 of 2001 and I was taken through the order with the application submitted by the petitioner earlier and the application Exh.22 wherein the request was made by the petitioner accused for recalling of the prosecution witnesses and the learned Special Judge has granted the said application subject to payment of cost of Rs.15,000/-- to be paid by the accused on the same day i.e. on 23.2.2004 and further ordered that if the amount of cost is paid, the Registry to issue summons to the witnesses returnable on 8.3.2004. As found from the certified copy of the order, the petitioner accused had already deposited the cost of amount of Rs.15,000/-before the trial court on the very day. As found from the application Exh.22 the case was fixed before the Presiding Judge on 21.2.2004 and the advocate representing the accused had some throat trouble and he was not in a position to speak and accordingly application for adjournment was submitted. However, as the witnesses were present, their evidence was recorded and as found on that day the learned Presiding Judge has recorded that the accused is not intent to cross examine the witnesses. Accordingly the witnesses were examined by the prosecution and their chief examination was over and the application was submitted by the advocate for the petitioner that the witnesses be recalled for cross examination for which the accused will pay costs. The learned trial Judge has accordingly while deciding the Application discussed in detail about the prosecution case and about the fact that the witnesses had remained present on earlier occasions and also the application for adjournment was granted and further recorded that by adjourning the matter the witnesses who are present have also suffered as they have

to come by leaving their regular work and the Government has to pay the allowances and further that the witnesses have to stay in the court for the whole day and ultimately there was no progress in the case because of the adjournment sought for by the accused and the learned trial Judge has also observed about the feeling of the witnesses which they gather as there was no progress of the case and the learned trial Judge has also accordingly while granting application for recalling of the witnesses imposed cost of Rs.15,000/-. As found from the order, the learned trial Judge has also observed that advocate Shri Joshi, who is appearing for the accused, has not produced any medical certificate or any affidavit as regards his illness and considering these facts, the learned trial Judge has imposed heavy cost of Rs.15,000/-- on the petitioner accused. It is also correct that earlier the learned Presiding Judge has also granted adjournment while granting application for adjournment submitted by the petitioner accused. In light of the submission made before me and on examining the order under challenge, I am completely in agreement with the learned trial Judge that once the matter is fixed for trial there should be progress of the case, when the witnesses are present. The trial is fixed by the learned trial Judge considering the fact that there will be a progress in the trial. However, it is also to be seen that some time either the Presiding Judge or the advocate appearing in the matter due to sickness may not be available and here in the present case when the evidence of the witnesses were recorded the application for adjournment was submitted on medical ground as the advocate was not well and he had a throat trouble and he was not in a position to speak. The learned trial Judge was justified in imposing cost while granting application for recalling the witnesses. But at the same time, the cost must be proportionate and the order should be bearing in mind that it should not be so heavy. I am not at all disturbing the reasoning of the learned trial Judge. However, according to me that the amount of Rs.15,000/- imposed by way of cost for granting application for recalling of the witnesses is too harsh, considering the fact that the advocate had sought adjournment on earlier occasion on medical ground. According to me the ends of justice will meet by modifying the order of cost imposed by the trial court by reducing the amount of cost and according to me it will be reasonable that the order of cost imposed by the learned Special Judge is modified and it is to be read that the petitioner to pay cost of Rs.5000/-- and not Rs.15,000/-. In view of the fact that the order of cost is modified and the petitioner accused has already

deposited a sum of Rs.15,000/-- before the trial court, the petitioner is entitled for refund of balance amount of Rs.10,000/- and the same be paid on proper verification.

7. In Criminal Revision Application No.377 of 2004 while going through the application and the documents attached thereto, it transpires that the learned trial Judge has while considering the application for adjournment submitted by the petitioner/advocate granted the adjournment and imposed cost to be paid by the accused and the petitioner has while seeking relief prayed for quashing and setting aside the order passed by the learned Special Judge dated 18.5.2004 passed below Application Exh.13 in Special Case No.36 of 2002 and by way of interim relief, the petitioner accused has prayed for stay of further proceedings of the case pending before the learned Special Judge. Exh.13 is the Application submitted by advocate for the petitioner accused highlighting that the cross examination of the complainant is in progress and he is personally present before the Court. However, as he was suffering from fever and dysentery since last two days and due to sickness he has fallen sick, he is not in a position to cross examine the witnesses and prayed that the cross examination of the complainant be deferred and the matter be adjourned to 14.6.2004. Considering the said application, the learned Special Judge has observed that sufficient time has been granted. However, as the application is on the personal ground, the court has granted adjournment upto 15.6.2004 by observing that no further adjournment shall be granted and P.P. was directed to keep all the witnesses present. Below the said order, the learned Special Judge has made endorsement to the effect that Nazir to accept Rs.2500/-. It is the case of the petitioner that while granting application Exh.13 for adjournment on the medical ground of his advocate, the court has imposed cost on the petitioner by directing Nazir to accept Rs.2500/-. In this Revision Application, the petitioner has also annexed the applications and the orders passed by the learned Special Judge earlier, namely, while deciding Applications Exh.8 dated 20.1.2004, Exh.12 dated 28.4.2004, Exh.13 dated 18.5.2004 and Exh.9 dated 26.2.2004 and while granting applications for adjournment, the court has imposed cost on the petitioner accused.

8. As found, the petitioner in Criminal Revision Application No.377 of 2004 has prayed for only relief of quashing the order below Exh.13 dated 18.5.2004, wherein

the learned Special Judge has imposed cost of Rs.2500/-on the petitioner accused while adjourning the case. As found from the application Exh.13 that the advocate for the petitioner accused was very much present before the court and the cross examination of the complainant was in progress. The ground for seeking adjournment is on personal ground of the advocate as he had fallen sick as he was suffering from fever and dysentery and on that ground he can not proceed for cross examination of the complainant. When the learned Special Judge has accepted the ground that the advocate was sick and the learned Special Judge has considered that the adjournment is sought for on personal ground and when the learned Special Judge was also inclined to accede to the request made by the petitioner for adjournment, the learned Special Judge was not justified in imposing cost of Rs.2500/-. It is true that earlier the request for adjournment was granted. It is also equally true that it will cause inconvenience to all including the witness/complainant and other witnesses who are present and to the court and to the learned P.P. as well as to the accused. In my view, once the learned Special Judge has accepted the reason for adjournment and that too on personal ground when the advocate representing the accused was not well, the learned trial Judge ought not to have imposed cost on the petitioner. It is further found that even earlier applications made by the petitioner for adjournments were granted by imposing cost and the petitioner accused has deposited the cost amount before the Nazir of the Court. Concentrating with the order under challenge passed below Exh.13, wherein the learned trial Judge has while granting application for adjournment imposed cost of Rs.2500/-- on the petitioner accused and when the ground is for sickness of the advocate, this court is of the view that the order of cost deserves to be set aside and accordingly the order passed below Application Exh.13 imposing cost of Rs.2500/- is set aside and the petitioner accused is entitled to refund of the said amount, as the said amount is deposited by the petitioner and accordingly the trial court shall refund the said amount to the petitioner after proper verification as contemplated under the Criminal Manual.

9. I am told that now the trial before the learned Special Judge is fixed on 28.6.2004 and Mr. Kinariwala has also assured me that the petitioners have already made arrangement for engaging advocate and he will not seek any further adjournment in the matter. Accordingly now the matter will proceed further on the adjourned date to enable the learned Special Judge to consider and

dispose off the Special Cases in accordance with law.

10. Accordingly Criminal Revision Application No.353 of 2004 is allowed partly to the extent that the order of cost imposed by the learned trial Judge below application Exh.22 in Special Case No.18 of 2001 on 23.2.2004 is modified and the petitioner to pay cost of Rs.5000/-instead of Rs.15,000/-- and the balance amount deposited by the petitioner shall be refunded to the petitioner on proper verification as contemplated under the Criminal Manual. Rule is made absolute in the above terms. In Criminal Revision Application No.377 of 2004 the order passed below Application Exh.13 in Special Case No.36 of 2002 on 18.5.2004 regarding imposing cost of Rs.2500/-- is set aside and as the amount is already deposited by the petitioner, the petitioner is entitled for refund of the said amount. The trial court shall refund the said amount on proper verification as contemplated under the Criminal Manual. Rule is made absolute accordingly.

(D.K.Trivedi,J)

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